

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONNALE C. CLAY,

Defendant.

8:22-CR-140

ORDER

On July 25, 2023, the Court held a *Faretta*¹ hearing to determine if the defendant desired counsel or to represent himself at trial. At a previous hearing before the magistrate judge, the magistrate judge denied prior defense counsel's motion to withdraw, granted the defendant's request to represent himself, and appointed prior defense counsel as standby counsel. [Filing 57](#); [Filing 56](#) (Text Minute Entry); *see also United States v. Ivers*, 44 F.4th 753 (8th Cir. 2022) (“[T]he district court does not violate the right to counsel when it gives a defendant the choice between adequate representation and self-representation.”). The defendant then filed a *pro se* Motion to Continue Trial. [Filing 62](#).

During the *Faretta* hearing, the defendant stated that he desired counsel so long as it was not his prior defense counsel. Based on the colloquy between the Court and the defendant, the Court determined that it was in the best interests of justice to appoint the defendant new counsel. The Court ordered the Federal Public Defender's Office for the District of Nebraska to provide new counsel to the defendant.

The Court then took up the defendant's *pro se* Motion to Continue. [Filing 62](#). Trial in this matter was scheduled for August 15, 2023. [Filing 53](#). The Court had just determined that the

¹ *Faretta v. California*, 422 U.S. 806 (1975)

defendant shall be provided new counsel, who will need time to prepare for trial. Therefore, the Court found that the ends of justice supported granting the defendant's *pro se* Motion to Continue and excluding the time until trial under the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(7)(A) (periods of delay before trial "resulting from a continuance by any judge . . . if the judge granted such a continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial"). Specifically, the Court found that the ends of justice supported continuing trial until November 7, 2023.

The Court makes this finding after considering the factors outlined under 18 U.S.C. § 3161(h)(7)(B). The Federal Public Defender has not yet chosen who will now represent the defendant. Once new counsel has entered his or her appearance, he or she will need reasonable time necessary to prepare for trial or to pursue plea negotiations with the Government. *See* 18 U.S.C. § 3161(h)(7)(B)(iv); *see also United States v. Bonilla-Filomeno*, 579 F.3d 852, 857 (8th Cir. 2009) (holding that there was no Speedy Trial Act violation when the Court noted a continuance "would permit [the defendant] and the government 'time to pursue plea negotiations or prepare for trial'"). The new trial date set by the Court constitutes a reasonable time for new counsel to prepare or negotiate. There was also pretrial motion practice conducted in this case that new counsel will need to familiarize himself or herself with, along with the underlying facts of this case, so it would be unreasonable to expect new counsel to be prepared within the time parameters allowed under the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(7)(B)(ii). Finally, forcing new counsel to prepare for trial without a continuance would risk a "miscarriage of justice." 18 U.S.C. § 3161(h)(7)(B)(i). Accordingly,

IT IS ORDERED:

1. The Federal Public Defender is directed to provide new counsel for the defendant;

2. The defendant's *pro se* Motion to Continue, [Filing 62](#), is granted;
3. The jury trial is continued to November 7, 2023, at 8:30 AM in Courtroom 5, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, NE before Judge Brian C. Buescher;
4. The Court finds that the ends of justice warrant exclusion of the time between the date of this order and November 7, 2023; and
5. The Clerk of Court is directed to mail a copy of this order to the Federal Public Defender's Office for the District of Nebraska.

Dated this 25th day of July, 2023.

BY THE COURT:

s/ Brian C. Buescher
United States District Judge